

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**MAR 24 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2008-0356-PR
	)	DEPARTMENT A
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
MARYANNE CHISHOLM,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20021306

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Barton & Storts, P.C.  
By Brick P. Storts, III

Tucson  
Attorneys for Petitioner

H O W A R D, Presiding Judge.

¶1 Maryanne Chisholm was convicted after a bench trial of conspiracy and two counts of fraud in insolvency. The trial court suspended the imposition of sentence and placed her on concurrent terms of probation, the longest of which was seven years. She appealed the convictions, and this court affirmed. *State v. Chisholm*, Nos. 2 CA-CR 2005-0176, 2 CA-CR 2005-0208 (consolidated) (memorandum decision filed Oct. 31, 2007). Chisholm then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., based on

ineffective assistance of counsel. The trial court denied relief without an evidentiary hearing, and this petition for review followed. Absent an abuse of discretion, we will not disturb the trial court's ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 The facts that gave rise to the charges against Chisholm and her husband are set forth in this court's memorandum decision in the appeal.<sup>1</sup> In her petition for post-conviction relief, Chisholm asserted multiple instances in which her trial counsel's representation had allegedly been ineffective. We summarize only those claims she reasserts on review: counsel was ineffective in advising her to waive her right to a jury trial; in failing to insist the charges in this case, CR-20021306, be tried after those in cause number CR-20013189 and, as a result, permitting her testimony in this case to be used against her in the latter case, which, she asserts, had always been the prosecutor's plan; in failing to adequately argue that her former attorneys at the law firm of Streich Lang should not have been permitted to testify against her based on the attorney-client privilege; and in failing to utilize a particular computer software program known as "case map" to organize the defense of this case.

¶3 In a thorough, well-reasoned minute entry, the trial court identified each of the claims of ineffective assistance of counsel, resolving them clearly and correctly according to the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984), and adopted in *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). No purpose would be served by rehashing the court's order here; rather, we adopt it, finding unpersuasive

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<sup>1</sup>Chisholm was convicted of multiple fraud-related charges and fifty-four counts of sale of unregistered securities in a separate indictment. The facts relating to those convictions are set forth in this court's memorandum decision in *State v. Chisholm*, No. 2 CA-CR 2005-0409 (memorandum decision filed May 22, 2008).

Chisholm’s contentions that the trial court erred in denying her petition for post-conviction relief. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993); *see also Swoopes*, 216 Ariz. 390, ¶ 47, 166 P.3d at 959. Nor has Chisholm established the court abused its discretion by deciding these claims summarily without first conducting an evidentiary hearing. A defendant is not entitled to an evidentiary hearing unless she raises a colorable claim for relief—that is, one which, if taken as true, “might have changed the outcome.” *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). Like the ultimate decision whether to grant or deny post-conviction relief, the question whether a claim raises a sufficiently colorable claim to warrant an evidentiary hearing “is, to some extent, a discretionary decision for the trial court.” *State v. D’Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). Absent an abuse of that discretion, we will not disturb the trial court’s ruling. *See State v. Sanchez*, 200 Ariz. 163, ¶ 13, 24 P.3d 610, 614 (App. 2001). In evaluating Chisholm’s claims, the trial court applied the correct standard in finding no material issue of fact warranting a hearing. On this record, the court did not abuse its discretion.

¶4 We grant the petition for review, but we deny relief.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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PHILIP G. ESPINOSA, Judge